



**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

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In re: BAYCOL PRODUCTS LITIGATION)	MDL No. 1431
)	(MJD/JGL)
This Document Relates To:)	
)	
All Actions)	

THE PARTIES' STATUS REPORT AND PROPOSED AGENDA

September 27, 2004

The parties herewith submit the following Joint Status Report and Agenda for the hearing on September 27, 2004.

I. Pending Cases

A. As of September 24, 2004, defendants have been served with 6,653 cases that remain active, down from 14,349 cases filed since this litigation commenced. Sixteen percent (16%) of the cases filed in state court remain active (that is, 871 of 5,707 filings); sixty-seven percent (67%) of the cases filed in federal court remain active (5,777 of 8,637 filings).

B. As of the last status conference in June, 2004, defendants had been served with 7,642 cases that were active. Of that total, 6,046 cases were pending in federal court and 1,596 cases were pending in state court. Filed but unserved cases were not included in these totals.

C. An updated list of plaintiffs' counsel in pending cases has been provided to the
PSC.

II. Settlement

A. To date, Defendants have settled 2,865 cases with a total value of \$1,096,030,128.

Of this total, 727 cases have been determined to be subject to the MDL assessment, with a total value of \$284,689,774.

B. As of the last status conference, Defendants had settled 2,716 cases with a total value of \$1,043,919,200. Of this total, 675 cases had been determined to be subject to the MDL assessment, with a total settlement value of \$234,259,607.

C. Approximately 136 cases have been submitted to the MDL mediation process.

D. In addition to the mediation program, the PSC is continuing to negotiate a limited number of cases directly with Bayer.

E. Mediators' Report: Special Master Remele.

III. Discovery

A. The parties will provide the Court with a report on Pretrial Order 114.

B. The Pennsylvania state court has required plaintiffs to submit case specific expert reports for all remaining non-rhabdo cases. Of the 3,400 cases that were subject to *Lone Pine* orders, only 156 active cases remain.

C. Depositions of Bayer AG witnesses Messrs. Mueck and Hommering are scheduled for next month in Amsterdam. The PSC will have a report on discovery.

D. Depositions of generic expert witnesses continue.

E. Pursuant to PTO 99, Bayer and GSK have completed their de-designation of previously designated confidential documents. The PSC is considering whether to file a motion to recover costs associated with defendants' de-designation pursuant to PTO 99. Defendants will oppose any such motion.

IV. Motions

A. The following motions are fully briefed, have been submitted to the Court, and are ready for argument:

1. Defendants' Motion to Compel with Respect to PTO 114 Form Reports
2. Defendants' Request to Quash the PSC's Motion for Letters Rogatory

B. The following motions are being briefed:

1. Motions by Weitz and several other firms to withdraw from representation of certain plaintiffs, without substituting new counsel. Defendants have filed oppositions to some motions and are in the process of briefing others. Defendants also have submitted to the Court a proposed order addressed to these motions. Weitz and the PSC are reviewing the draft.

2. Motions by Weitz and several other firms to dismiss without prejudice cases in which PTO 114 reports are or were due. Defendants have filed oppositions to some of these motions and are preparing oppositions to others.

V. Trial Settings and Remand Issues

A. There are presently no trial settings for cases in the MDL.

B. A list of state court trial settings has been provided to the Court and the PSC. In Philadelphia, 37 of the 57 muscle injury/contested rhabdo cases originally scheduled for trial this fall have been discontinued.

C. Defendants have submitted to the Court a proposal for completion of discovery and for trial of cases selected by this Court based on PTO 127 and drawn from cases filed in the District of Minnesota. The PSC has submitted a letter to the Court with some suggestions for

group resolution of cases that have complied with PTOs 114 and 127.

D. Daniel Becnel has filed a motion in the JPML seeking to disband this MDL on the ground that the Court is conducting case-specific discovery. The motion has not been docketed by the JPML. If the motion is docketed at some future date, defendants will file an opposition.

Respectfully submitted,

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